

REMARKS

Claims 1-20 stand rejected and are presently pending in the application.
Favorable reconsideration in view of the following remarks is earnestly solicited.

Rejection under 35 U.S.C. § 103(a) over Mowrey-McKee in view of Chowhan:

In section 3 of the Office Action dated June 9, 2009, the Examiner has rejected claims 1-3 and 5-20 under 35 § U.S.C. 103(a) as being unpatentable over Mowrey-McKee et al. (U.S. Patent No. 5,817,277) in view of Chowhan et al. (U.S. Patent No. 5,741,817). This rejection is respectfully urged as in error.

As noted on page 3 of the Office Action dated June 9, 2009, Mowrey-McKee et al. does not describe L-histidine in an ophthalmic solution. The Examiner relies on Chowhan et al. to teach this limitation, indicating that it would be obvious to include low molecular weight amino acids to improve the efficacy of antimicrobial preservatives in ophthalmic solutions.

However, Mowrey-McKee et al. and Chowhan et al. teach chemical relationships that are in stark contrast to each other. For example, Mowrey-McKee et al. discloses utilizing EDTA as a preferred component of the ophthalmic solution. On the other hand, Chowhan et al. discloses ophthalmic solutions that do not utilize EDTA. Applicant kindly directs the Examiner's attention to Col. 1, lines 29-33 of Chowhan et al., where it is disclosed that EDTA may in fact damage corneal cells. A person of ordinary skill in the art would be dissuaded from combining the teachings of Chowhan et al. with those of Mowrey-McKee et al., as in the spirit of Chowhan et al. one would seek to avoid the use of EDTA in ophthalmic solutions to prevent corneal cell damage. Therefore, combination with the solutions disclosed by Mowrey-McKee et al., which preferably utilize EDTA, goes against the explicit teachings of Chowhan et al., which utilize solutions without EDTA.

At least for the reasons set forth above, it is believed that the instant claims are non-obvious over Mowrey-McKee et al. and Chowhan et al., and that this rejection be reconsidered and withdrawn.

Rejection under 35 U.S.C. § 103(a) over Mowrey-McKee, Chowhan and Han:

In section 4 of the Office Action dated June 9, 2009, the Examiner has rejected claims 1-20 under 35 § U.S.C. 103(a) as being unpatentable over Mowrey-McKee et al. as modified by Chowhan et al. as applied to claims 1-3 and 5-20 above, and further in view of Han et al. (U.S. Patent No. 5,620,970). This rejection is respectfully urged as in error.

As discussed above, one skilled in the art would not combine the solution of Mowrey-McKee et al. as modified by the solution of Chowhan et al. Additionally, claims 3-20 benefit from dependency of claims 1 and 2, which as discussed above, are patentable. Therefore, it is respectfully requested that this rejection be reconsidered and withdrawn.

Double Patenting:

In sections 5-7 of the Office Action dated June 9, 2009, the Examiner has raised several provisional rejections on the ground of nonstatutory obviousness-type double patenting. As these are provisional rejections, Applicant will consider the filing of a terminal disclaimer once there has been an indication of allowable claims in either this or the copending applications.

Conclusion:

It is believed that the foregoing is a complete response and that the claims are now in condition for allowance. Applicant requests that a timely Notice of Allowance be issued in this case.

Applicant appreciates the opportunity to call the Examiner but believes that this amendment to the claims and the foregoing remarks fully address the issues raised by the Examiner. On the other hand, the Examiner is invited to call the undersigned attorney if he has any matters to address that will facilitate allowance of the application.

In the event that Applicant has overlooked the need for an extension of time, additional extension of time, payment of fee, or additional payment of fee, Applicant

hereby conditionally petitions therefore and authorizes that any changes be made to
Deposit Account No.: 50-3010.

Respectfully submitted,

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